IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

GILDARDO INZUNZA, *Appellant*.

No. 1 CA-CR 16-0747
FILED 11-28-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-001092-002
The Honorable Rosa Mroz, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Jason Lewis
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Jesse Finn Turner
Counsel for Appellant

MEMORANDUM DECISION

Judge Thomas C. Kleinschmidt[1] delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

K L E I N S C H M I D T, Judge:

¶1 Gildardo Inzunza appeals his conviction and sentence for tampering with physical evidence. For the following reasons, we affirm.

BACKGROUND

¶2 On October 9, 2014, the Arizona Department of Corrections ("DOC") initiated a search of Inzunza's prison cell. Inzunza was sitting on a bed when Officer Ramirez announced the search. Inzunza's cellmate was sitting on the toilet at the time but then approached Officer Ramirez and complained that the cell had already been searched that day. When Officer Ramirez advised he had to search the cell again, the cellmate attempted to close the door. An officer in the control room attempted to open the door a second time, but the cellmate again forced it closed.

¶3 At this time, Officer Ramirez called for backup. Although he could not see if Inzunza had anything in his hands, Officer Ramirez saw him get up from the bed, move towards the toilet area, and then heard a toilet flush. While this was happening, the cellmate stood in front of the cell window, obstructing the officer's view into the cell. Officer Ramirez eventually entered the cell with several other officers and conducted a search. During the search, Officer Ramirez found a cell phone in the toilet and a charger in a shoe.

¶4 At the time of this incident, it was a violation of prison policy for an inmate to be non-compliant with an officer's directions, and such violation would prompt "some . . . sort of proceeding." Additionally,

---

[1] The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

having contraband like a cell phone in prison was both a crime and a violation of prison policy with similar consequences.

¶5 The State charged Inzunza and his cellmate, together as codefendants and accomplices, with promoting prison contraband (Count 1), and tampering with physical evidence (Count 2).[2]

¶6 During the trial, an investigator with DOC testified that during an investigative interview with Officer Ramirez, the officer had confused the names of the two inmates, resulting in an investigative report that contained a conflicting account of each inmate's role during the incident. However, Officer Ramerez's original, informal report indicated Inzunza put the phone in the toilet, and that is what he testified to at trial.

¶7 At the conclusion of the State's evidence, Inzunza moved, unsuccessfully, for judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20(a). The jury thereafter acquitted Inzunza of Count 1 and found him guilty of Count 2.

¶8 Prior to sentencing, Inzunza renewed his motion for judgment of acquittal after the verdict pursuant to Rule 20(b), arguing the State failed to present evidence that destruction of contraband would result in an "official proceeding" under the statute at issue. The trial court denied the motion, and sentenced Inzunza to a prison term of two-and-a-quarter years with 605 days of presentence incarceration credit, to be served consecutively to the sentence he was serving at the time of the offense. Inzunza timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1),[3] 13-4031, and -4033(A).

ANALYSIS

¶9 A person is guilty of "tampering with physical evidence," if "with intent that [the evidence] be . . . unavailable in an official proceeding . . . which such person knows is about to be instituted, such person . . . [d]estroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability." A.R.S. § 13-2809(A)(1); *see also State v. Escalante*, 242 Ariz. 375, 386, ¶ 49 (App. 2017). An official proceeding is a "proceeding heard before any legislative, judicial, administrative or

---

[2] Before the trial, the codefendant pled guilty to promoting prison contraband.

[3] Absent material changes from the relevant date, we cite a statute's current version.

other governmental agency or official authorized to hear evidence under oath." A.R.S. § 13-2801(2).

¶10 Inzunza argues the superior court erred in denying his renewed motion for a directed verdict. Specifically, Inzunza contends the State failed to prove he knew an official proceeding was "about to be instituted," as required by A.R.S. § 13-2809(A)(1).

¶11 When considering a defendant's Rule 20 motion,

> the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Substantial evidence, Rule 20's lynchpin phrase, is such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt. Both direct and circumstantial evidence should be considered in determining whether substantial evidence supports a conviction.

State v. West, 226 Ariz. 559, 562, ¶ 16 (2011) (internal citations and quotation marks omitted). The court, however, may not weigh the facts or disregard inferences that might reasonably be drawn from the evidence; "when reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury." *Id.* at 563, ¶ 18. We review the sufficiency of the evidence de novo. *State v. Bon*, 236 Ariz. 249, 251, ¶ 5 (App. 2014).

¶12 In this case, there is evidence that Inzunza knew his cell was about to be searched and thereafter attempted to destroy known contraband by flushing a cellphone in the toilet. Although the jury was presented with evidence that there was confusion about the roles of the cell's two occupants, a reasonable jury could find that Inzunza discarded the cellphone as his cellmate delayed the announced search to avoid a subsequent prosecution. As noted by the superior court, it was for the jury to decide whether the State's witnesses were credible, and it was not the role of the court to grant a judgment of acquittal based only on the "confusing" nature of the witness' testimony. Additionally, the court noted that one of the State's theories was that of accomplice liability, and that there was a "sufficient basis for the jury to decide the issue either on the accomplice liability theory or that he's the one who did the act [of tampering]."

¶13 Further, we need not decide what type of "official proceeding" was anticipated by Inzunza when he attempted to elude the cell search; rather, we determine that a trier of fact could reasonably infer from Inzunza's action of flushing the cell phone and/or preventing Officer Ramirez from entering the cell to search, that Inzunza reasonably knew an official proceeding would be instituted. *See Escalante*, 242 Ariz. at 386, ¶ 50 (finding reasonable inference could be drawn from evidence that defendant, knowing he was being followed by police, discarded methamphetamine and continued driving to avoid being arrested and subsequently prosecuted); *State v. Jacobs*, 369 P.3d 82, 85 (Or. Ct. App. 2016) (concluding the defendant's statement that he knew he was under arrest "was sufficient to permit a rational trier of fact to find that defendant swallowed the marijuana with knowledge that an official proceeding was about to be instituted"); *People v. Atencio*, 140 P.3d 73, 75-77 (Colo. App. 2005) (determining that defendant knew an official proceeding was about to be instituted where defendant tossed baggies of drugs over a fence while running from police officers after the officers tried to arrest the defendant); *see also State v. Noriega*, 187 Ariz. 282, 286 (App. 1996) (noting "the defendant's mental state will rarely be provable by direct evidence and the jury will usually have to infer it from his behaviors and other circumstances surrounding the event").

CONCLUSION

¶14 Because the trial evidence was sufficient to support the guilty verdict, Inzunza has not shown that the superior court erred by denying his renewed motion for judgment of acquittal. *See State v. Clow*, 242 Ariz. 68, 71, ¶ 16 (App. 2017). We affirm Inzunza's conviction and sentence.